United States Department of Labor Employees' Compensation Appeals Board

D.D., Appellant)	
and)	Docket No. 07-126
TENNESSEE VALLEY AUTHORITY,)	Issued: May 15, 2007
PARADISE FOSSIL PLANT, Drakesboro, KY, Employer)	
)	Constitution of the Bossel
Appearances:		Case Submitted on the Record
Appellant, pro se		
Office of Solicitor, for the Director		

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge MICHAEL E. GROOM, Alternate Judge JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 18, 2006 appellant filed a timely appeal from the September 7, 2006 merit decision of the Office of Workers' Compensation Programs which suspended his compensation during his incarceration on two felony convictions. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the suspension.

<u>ISSUE</u>

The issue is whether appellant forfeited his right to compensation during the period of his incarceration.

FACTUAL HISTORY

On April 30, 2001 appellant, then a 45-year-old senior instrument mechanic, filed a claim alleging that he developed pulmonary fibrosis as a result of his federal employment. The Office accepted his claim for pulmonary fibrosis and paid compensation for wage loss on the periodic

rolls. On April 5, 2004 he received a schedule award for a 76 percent permanent impairment of the lungs. The period of the award ran from March 21, 2004 to October 5, 2008.

The Office received an August 11, 2006 judgment in a criminal case from the United States District Court, Western District of Kentucky, showing that appellant was found guilty of conspiring to distribute and to possess with the intent to distribute between 150 and 333.68 grams of methamphetamine, in violation of the Controlled Substances Act. He was also found guilty of knowingly and intentionally attempting to possess with intent to distribute the same. The Court sentenced appellant to serve two concurrent terms of 60 months imprisonment and committed him on August 11, 2006 to the United States Bureau of Prisons.

In a decision dated August 23, 2006, the Office found that appellant's entitlement to compensation for wage loss was suspended due to his felony conviction. The Office found that this suspension was effective August 11, 2006 and would remain in effect until appellant's release from prison. In a decision dated September 7, 2006, the Office revised its prior decision to include suspension of his entitlement to both compensation for wage loss and the schedule award benefits appellant was receiving at the time of his incarceration.

LEGAL PRECEDENT

Section 8148 of the Federal Employees' Compensation Act, entitled "Forfeiture of benefits by convicted felons," states in part:

"(b)(1) Notwithstanding any other provision of this chapter (except as provided under paragraph (3) [relating to compensation for dependents]), no benefits under this subchapter or subchapter III of this chapter shall be paid or provided to any individual during any period during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to that individual's felony under applicable law.

"(2) Such individual shall not be entitled to receive the benefits forfeited during the period of incarceration under paragraph (1), after such period of incarceration ends."²

The implementing regulations clarify that the convicted individual forfeits all rights to compensation during the period of incarceration:

"Whenever a beneficiary is incarcerated in a State or Federal jail, prison, penal institution or other correctional facility due to a State or Federal felony conviction, he or she forfeits all rights to compensation benefits during the period of incarceration. A beneficiary's right to compensation benefits for the period of

¹ 21 U.S.C. § 841 (unlawful acts and penalties); 18 U.S.C. § 2 (aider and abettor liability).

² 5 U.S.C. § 8148(b)(1).

his or her incarceration is not restored after such incarceration ends, even though payment of compensation benefits may resume."³

<u>ANALYSIS</u>

Beginning August 11, 2006, a federal court committed appellant to the United States Bureau of Prisons to serve two concurrent terms of 60 months imprisonment for violating the Controlled Substances Act. As a convicted felon, appellant thereby forfeits his right to compensation benefits during the period of his incarceration. Payment of compensation may resume after his incarceration ends, but the benefits forfeited during the period of his incarceration shall not be restored. The Office has properly applied 5 U.S.C. § 8148. The Board will affirm the Office's September 7, 2006 decision.

CONCLUSION

Pursuant to 5 U.S.C. § 8148, appellant forfeited his right to compensation benefits during the period of his incarceration.

<u>ORDER</u>

IT IS HEREBY ORDERED THAT the September 7, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2007 Washington, DC

> Alec J. Koromilas, Chief Judge Employees' Compensation Appeals Board

> Michael E. Groom, Alternate Judge Employees' Compensation Appeals Board

> James A. Haynes, Alternate Judge Employees' Compensation Appeals Board

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³ 20 C.F.R. § 10.18(a) (1999).